

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.
UNITED PARCEL SERVICE
Case No. # 62887

DECISION OF THE HEARING OFFICER

Appearances: ██████████ self-represented, claimant
United Parcel Service, employer—did not appear

Nature of Dispute: RSA 275:43 I - Weekly, Unpaid Wages
RSA 275:43 V - Weekly, Unpaid Vacation Pay

Claimant: ██████████

Employer: United Parcel Service—did not appear

Date of Hearing: August 16, 2021

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a Wage Claim with the New Hampshire Department of Labor on June 16, 2021 asserting that he is owed \$1,042.25 in unpaid vacation pay. Notice of Wage Claim was forwarded to the employer on June 16, 2021. The employer did not respond with an objection to the Wage Claim within 10 days. The claimant requested a hearing on the above noticed issue; this hearing was scheduled accordingly.

A formal hearing was held by the Department of Labor in Concord, New Hampshire at 1: 17 PM on August 16, 2021. The claimant appeared telephonically and was the sole witness for the hearing. The employer did not appear.

FINDINGS OF FACT

--- Duly sworn, the-claimant testified that he resided in Keene, New Hampshire at the time of the hearing.

The claimant testified that he began employment with United Parcel Service in April 2019. He was hired to pack trucks in a part-time position. He was later promoted to a nonunion part time manager position and was paid for a minimum of 27.5 hours per

week. If he worked more than 27.5 hours, he was paid for the additional hours at his hourly rate of \$18.95 per hour. He was given an automatic two weeks of vacation leave and five personal days annually when he accepted the nonunion position. The claimant described that this position was different and that he didn't have the protections of the union. In exchange, he was given two weeks of vacation and five personal days upfront each year.

The claimant testified that he was not aware of any policy handbook and if the company did have a policy with respect to what happens to unused vacation time upon separation from employment, he was not made aware of it.

In terms of using vacation time, employees requested time off on a calendar, in order of seniority, and vacation requests were approved by supervisors. The claimant testified that in April and May 2020 he had put his name on the calendar to request vacation leave. His supervisor, Penny Couture, asked him not to take his requested vacation as they were very busy. At the request of his supervisor, the claimant removed his name from the vacation calendar. The claimant testified that he never used any of his two-week vacation leave. His employment with this company ended on June 9, 2020. Upon separation from employment, the claimant was paid for all hours worked; however, he was not paid for unused vacation leave. The claimant asserts that he is owed for unpaid vacation leave in the amount of \$1,042.25 based on two weeks of 27.5 hours per week at a rate of pay of \$18.95 per hour.

DISCUSSION AND CONCLUSIONS

The claimant has the burden of proof in this matter to show by a preponderance of the evidence that he is owed unpaid wages. Proof by a preponderance of evidence as defined in Administrative Rule Lab 202.05 means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The State of New Hampshire does not require employers to offer benefits to their employees and, if they do, does not require employers to implement specific terms or guidelines. However, if the employer offers benefits to employees, a thorough description of how employees earn them, how employees are able to use them, what happens to any accrual at separation, as well as any other stipulations the employer decides to include, are required pursuant to RSA 275: 49. RSA 275: 49 requires employers, in part, to inform employees in writing, as to their employment practices and policies with regard to vacation pay and other fringe benefits.

The claimant argued that he did not take requested vacation at the request of his employer. At the time of his separation from employment, he had two weeks of unused vacation leave. The claimant argued that payment for this unused vacation leave was due upon separation.


The employer did not offer an objection to the wage claim and did not appear at the hearing to refute the assertions made by the claimant.

After a review of the evidence presented, the claimant's argument that he is due unpaid vacation pay is found to be persuasive. The claimant testified that was given two weeks of vacation leave in exchange for acceptance of a non-union manager position. The claimant testified, credibly, that he was not aware of any policy regarding payment of vacation time upon separation from employment. The evidence provided at the hearing supports that the claimant had 55 hours of unpaid vacation hours for which payment was due upon separation from his employment on June 9, 2020. There was no evidence that the employer had a written policy indicating that benefits would not be paid out upon separation of employment. Given the testimony that the claimant had 55 hours of unpaid vacation leave at the time of separation and that his hourly rate was \$18.95, the claimant's assertion that he is due wages in the amount of \$1,042.25 is found to be persuasive.

DECISION

After a thorough consideration of the evidence and testimony presented, and as RSA 275:43 I requires that an employer pay an employee all wages that are owed and due, it is found that the claimant has successfully met his burden to prove by a preponderance of the evidence that he is owed for unpaid wages for unpaid vacation hours; it is hereby ruled that **this Wage Claim is valid in the gross amount of \$1,042.25.**

The employer is hereby ordered to send a check to the Department of Labor, payable to ██████████ in the gross total of **\$1,042.25**, less applicable taxes with a statement of said deductions, **within thirty (30) days of the date of this Order.**



Tahra White
Hearing Officer

Date of Decision: August 20, 2021

Original: Claimant
cc: Employer

TW/cb